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ABSTRACT

As one of several special reports on development possibilities for the agriculture and forestry sector of the Four Corners Economic Development Region, this monograph deals with the use of industrial development bonds as a means of resolving finance problems arising from inadequate or nonexistent credit in rural areas. Distinguishing between the general obligation bond (one secured by obligating repayment through tax revenues) and the revenue bond (one secured by the industrial project itself), this report details the laws governing industrial development bonds in each of the states in the Four Corners Region (New Mexico, Utah, Colorado, and Arizona). Additionally, this document presents discussion on the following: (1) the advantages and disadvantages of industrial development bonds; (2) the historical development of industrial development bonds; and (3) the implementation procedure for industrial revenue bonds. The appendices present: (1) A Sample Ordinance Relating to Requirements for the Issuance by a Municipality of Revenue Bonds Pursuant to the Industrial Revenue Bond Act; and (2) Information Required for Applications for Issuance of Municipal Industrial Revenue Bonds. (JC)

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INDUSTRIAL DEVELOPMENT BONDS FOR FINANCING PROJECTS IN RURAL AREAS

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AGRICULTURAL EXPERIMENT STATION RESEARCH REPORT 216

Foreword

Information reported in this publication was developed under Technical Assistance Contract - F.C.R.C. No. 301-300-14 Four Corners Regional Commission, "Development Opportunities for Agriculture and Forestry Resources in the Four Corners Region." The research was jointly financed by the Four Corners Regional Commission and the Experiment Stations of New Mexico, Arizona, Colorado, and Utah. The Agricultural Experiment Station at New Mexico State University coordinated the study and served as prime contractor with the Four Corners Regional Commission. The other Experiment Stations served as subcontractors to New Mexico State University.

This report is one of several special reports on development possibilities for the agriculture and forestry sector of the Four Corners Economic Development Region. In addition to the special reports on resource inventories and development possibilities there will be a final report.

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INDUSTRIAL DEVELOPMENT BONDS FOR FINANCING PROJECTS IN RURAL AREAS

Stephen W. Fuller[1]

Two major hypotheses have been advanced to explain underlying causes of inadequate credit to finance rural industrialization: 1) investment capital necessary for industrial development is often not available because local sources of credit are either inadequate or nonexistent; and 2) industrial financing problems arise from a lack of information about private sources of investment capital and from a lack of desire on the part of private capital for investment in relatively high-risk industrial plant facilities.

Industrial development or revenue bonds have been primarily used to resolve financing problems arising from inadequate or nonexistent credit in rural areas. This financing technique permits a local government unit (municipality or county) to issue bonds for industrial purposes. The community obtains the funds necessary for plant construction through a municipal bond issue. The plant is then constructed and leased to the firm at a rate equal to the annual payment necessary to retire the bonds. After the bonds are retired, the title to the plant is usually transferred to the firm.

Local governments have two ways of securing these bonds: (1) through taxes or (2) lease revenue acquired from the industrial project financed. If the bond is secured by obligating repayment through tax revenues, the form of the issue is a general obligation bond. If the bond is secured by the industrial project, that is, if the principal and interest are paid out of lease revenues from that project, the form of the issue is a revenue bond. The bulk of industrial development bond financing has been in the form of revenue bonds. Fifteen states permit the issuance of general obligation bonds to finance plant construction; however, none of these states are located within the Four Corners Region.[2]

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[1]Assistant Professor, Department of Agricultural Economics, New Mexico State University

[2]Falk, Lawrence H., and William J. Stober, "Industrial Development Bonds as a Subsidy to Industry," National Tax Journal, Vol. XXXII, No. 2, June 1969.

Advantages and Disadvantages of Industrial Development Bonds

Financing development through local bond issues (general obligation or revenue bonds) has advantages and disadvantages. One advantage is that local bond issues enable at least some firms to begin operation, when without such financing they would not have been able to do so. In such cases, it may breach entry barriers which prevent small firms from obtaining funds through the national money markets. Another advantage for the firm which has its plant financed by local government is that interest income received from local government bonds (general obligation or revenue bonds) is, under federal income tax laws, tax-free income. The tax-free nature of interest income from municipal bonds makes them attractive to many investors. The tax-exempt feature means that these bonds can be issued at significantly lower interest rates than corporate bonds issued by the firm (approximately one and a half to two percent lower). Consequently, the cost of capital to the firm is decreased.

A third advantage of industrial development bond financing is that the property is often exempt from state and local ad valorem taxes by virtue of its public ownership. Where such exemptions occur, the leasing firm receives a cost savings (discussed later as a disadvantage). Another important cost saving arises out of the corporate income tax structure. Expenditures on plant and equipment are not immediately tax deductible but must be depreciated over some period acceptable to the Internal Revenue Service, whereas rental payments are fully deductible as current expenditures.

Financing development through the use of general obligation and revenue bonds has several disadvantages. For example, if general obligation bonds are used to finance a plant and if the firm fails or leaves before the bonds have been retired, the community must pay the unpaid balance on the bonds from tax revenues. Default on these bonds would result in a decline in the community's credit rating, thus making it more difficult for the community to finance more traditional local government services such as education. The use of general obligation bonds for such projects is not permitted in any of the Four Corners states.

From the standpoint of the community, another disadvantage of using general obligation or revenue bonds is the exemption of the financed plant from local property taxes. The exemption occurs because the plant is owned by local government. Tax exemption of a new plant deprives the locality of tax revenue. Increased demand for public services may force the local government to increase taxes on the existing tax base. However, local government units in some states require companies to make payments in lieu of taxes.

The main advantage to using revenue bonds instead of general obligation bonds is that the local government is not required to retire the bonds if the leasing firm fails or moves its operation. When revenue bonds are used, the repayment of the bonds depends entirely on the lease revenue produced by the new facility, not on the taxing power of the community, as with the general obligation bonds. No lien exists against the future tax revenues of the local government unit if the revenue derived from the least is inadequate to retire the bonds on schedule. Aside from this major difference and the fact that the revenue bonds may not be subject to statutory debt limits, the revenue bonds have nearly the same advantages and disadvantages as general obligation bonds. The pro's and con's of revenue versus general obligation bonds is not relevant to the Four Corners states, since general obligation bond use for financing industrial projects is prohibited in these states.

Historical Development

Industrial development bond financing was introduced by Mississippi in 1936 as a part of its "Balance Agriculture With Industry Plan." At first, this financing technique was slow to be used. Initially, southern states were the only ones to utilize industrial development bonds. Kentucky was the second state to permit this means of financing by passing enabling legislation in 1948. Not until a 1954 Internal Revenue Service decision that permitted industrial development bonds to enjoy the same tax exemption as municipal bonds did their use become somewhat more prevalent. However, during the 1950's, the number of states permitting the issuance of industrial development bonds was quite small.[3] In 1963, further impetus was received by a favorable IRS ruling (IRS Rev. Rul. 63-20). By 1967, 43 states had some type of provision for bond financing, and during that year more than $1 billion of industrial bonds were issued.[4] A dramatic change took place in the average size of issues. In 1956, the average issue was $170,000, but by 1966, the average issue had increased to $4 million.[5] Many large companies capable of private financing were taking advantage of industrial development bond financing. The technique became controversial when used by small communities whose credit would never warrant such enormous borrowings. For example, Scottsboro, Ala., a town of 6,500 population, issued $97 million in bonds to build a plant for Revere Copper and Brass Company.

In March, 1968, the Treasury Department proposed ending the tax-exempt status of interest income from industrial development bonds. This resulted in such unrest among Congressmen from states who have used industrial development bond financing, that the Treasury was forced to settle for a $1 million limit on any single issue. Later the $1 million limit was increased to $5 million for special situations.[6] A revenue bond issue of $1-5 million, to qualify as tax exempt, must be:

1. On behalf of a single financial issue.

2. Part of a total project cost not greater than $5 million for six years including three before and three after issue date.

3. Specifically elected (for $5 million tax-exempt status) by the issuing agency; if not specifically elected, the $1 million tax-exempt limit automatically applies.

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[3]Ibid.

[4]Crepas, Kenneth J. and Richard A. Stevenson, "Are Industrial Aid Bonds Fulfilling Their Intended Purpose," Financial Analysts Journal, November-December 1968, pp. 105-109.

[5]"Plant Location 1969: The Big Deal is Getting Bigger," Business Management, August 1969, pp. 20-29.

[6]Ibid.

Industrial Revenue Bonds in New Mexico

In 1955, the New Mexico legislature passed a statute allowing the use of revenue bonds to finance industrial development. The constitutionality of the Industrial Revenue Bond law was challenged in the State Supreme Court (Village of Deming vs. Hosdreg Company, Inc., 62nd Volume, New Mexico Reports, p. 18) and upheld by a split decision in November, 1956.

The constitutionality dispute arose when the firm for whom the bonds were issued purchased their own bonds. To determine the consequence of such an action, consider the following example. A city issues the municipal bond, which enjoys an interest advantage of from one and a half to two percent compared to a corporate bond.[7] The city's lease arrangement with the firm will require it to remit the principal, interest, and issuance cost. The purchaser of the bond will receive from the issuing city the principal plus interest. If the firm for whom the local government issued the bond were to purchase these bonds, it would receive this payment. Under this type of arrangement, the capital is nearly interest-free. It might be argued that if the firm already had the available capital, there would be no advantage to having the plant financed by industrial revenue bonds. However, this argument is not sound when it is realized that the plant, which is municipally owned, would be exempt from ad valorem taxation. In essence, the firm escapes the property tax.

The New Mexico law forbids any municipality from issuing industrial revenue bonds on which the interest and repayment are guaranteed by payments from the municipal treasury or its taxing power, i.e., municipalities are restricted from using general obligation bonds to finance industrial developments.[8] Since bonds cannot be secured by the municipality's resources, they are secured by mortgages on the properties acquired through their sale. Therefore, the bond holder is protected from default by holding a first mortgage on the industrial property.

Under New Mexico statutes, a local government unit can acquire "projects" for use by industry. These projects include land and building, machinery, or such real and personal property deemed necessary.[9] The local government unit is allowed to purchase assets of a firm, pay its moving costs, and even provide operating capital for its operation in New Mexico. An opinion of the attorney general, dated June 17, 1960, states that "...in order for a business to qualify as a 'project' it must be an existing business." This would indicate that new business ventures may not be set up under the provisions of the law.

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[7]Stinson, Thomas, "Financing Industrial Development through State and Local Governments," Agricultural Economic Report No. 128, December 1967, Economic Research Service, USDA pp. 1-6.

[8]New Mexico Revenue Bond Act 1971, Department of Development, Industrial Division, Santa Fe.

[9]Ibid.

The New Mexico statute states that properties acquired under the bond issue and the income from the bonds are free from local and state taxation. In New Mexico, the bond-issuing government unit may require a payment in lieu of local taxes. Generally, New Mexico municipalities do not require this payment. Under a federal Supreme Court decision, states and their instrumentalities may not be taxed by the federal government; thus the bonds are also free from such taxation.

The New Mexico statute permits the project to be located within or outside the city limits. A municipality may issue bonds for the acquisition of projects within a 15-mile radius (but no farther) of the city limits. The distribution of municipalities in the state make most potential plant sites feasible.

The New Mexico Legislature, in 1970, amended various laws to permit the investment of certain state funds in industrial revenue bonds. Bonds issued on behalf of Singer-Friden valued at $2 million were bought by the state in February, 1970. An issue for Lenkurt Electric valued at $1 million was purchased in June, 1970.[10]

Industrial revenue bonds have been used in New Mexico to finance a variety of enterprises. Table 1 shows some of the enterprises financed by industrial revenue bonds in New Mexico. In two instances, industrial revenue bonds have been used to finance an agricultural processing firm. There are no unique problems associated with financing these types of enterprises.

Interest rates on industrial revenue bond issues have fluctuated directly with corporate bond issues. Generally, the interest rates on these issues have trended upward during the

[10]Ibid.

Table 1. Use of industrial revenue bonds to finance industry in New Mexico[1]

Company	Location	Amount of Issue
Swift & Company	Clovis	$2,200,000
Safeway, Lucerne Milk Division	Clovis	900,000
Hydro-Test	Deming	1,205,000
Tilden Tool and Rocket Drill	Deming	1,300,000
Auburn Rubber Company	Deming	4,400,000
College of Artesia	Artesia	2,600,000
Levi-Strauss Company	Albuquerque	1,500,000
Singer-Friden	Albuquerque	4,000,000
Lenkurt Electric	Albuquerque	6,000,000
Y and S Candy Company	Farmington	500,000
Presto Manufacturing Company	Alamogordo	1,000,000

[1]Personal interview with Bill Gallagher, Department of Development, Santa Fe, July 1971

past several years. As of August 1971, industrial revenue bonds, with 20-year maturity, issued for "blue chip" firms are being sold at interest rates of from seven to seven and a half percent. Bonds issued for less well-known firms are being sold at interest rates of eight to nine and a half percent.[11] Experience has proven that the salability of the bonds is dependent upon the issuance of a "bond-validating opinion" by a recognized firm of municipal bond attorneys. Generally, the company name, the company image, the financial security of the company, plus numerous other factors, intermingle in determining the interest rate on these issuances.

Because the industrial revenue bond statute in New Mexico is relatively new, the degree of latitude permitted by the present bond law is unknown. Only until the attorney general is asked to give an opinion can the possible legality of an action be determined. Several persons interviewed believe that the present statute is inadequate to aid existing New Mexico businesses.[12] For example, if an existing business which was originally financed by private capital should want to replace equipment in its plant, it would be impossible to finance the new equipment through the use of industrial revenue bonds. Recently, amended statutes permit the investment of certain state funds in industrial revenue bonds; however, several development promoters believe that the state's requirements on the firm are too high and rigid. At present, for a bond issue to qualify for state funds, the firm to be financed must (1) be listed on a stock exchange, (2) have assets of $10 million or greater, and (3) have paid dividends for the last nine years. Two development promoters believed that some financially sound firms have been overlooked because of the state's excessive requirements.

Industrial Revenue Bonds in Utah[13]

In 1967, the state legislature in Utah passed a statute (Utah Industrial Facilities Development Act) permitting the use of industrial revenue bonds. But up to October 1971, the provisions of this statute have been used only once--to finance a $2.5 million Wurlitzer Piano Company plant at Logan, Utah.

The industrial revenue bond statute in Utah is in many respects similar to the New Mexico statute; however, on several items they differ significantly.

As in New Mexico, local governmental units in Utah are restricted to the use of revenue bonds to finance industrial projects. Consequently, the bonds are not secured by the taxing power of the municipality but rather by a mortgage on the financed properties. The Utah statute states that a revenue bond may be issued "...for the purpose of defraying the cost of acquiring, constructing, reconstructing, improving, maintaining, equipping or furnishing any project...". A project is defined as "...any land, building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment

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[11]Telephone interview with bond broker for Stern Bros., Albuquerque, August 1971.

[12]Personal interviews with development promoters at Roswell and Santa Fe.

[13]Utah Industrial Facilities Development Act, State of Utah, Senate Bill No. 187.

deemed necessary...". The Utah statute does not permit the proceeds from bond sale to be used by the firm for operating capital.

The Utah statute does not explicitly state that new business ventures may not be set up under the provisions of the law. That is, the statute does not require that the firm under consideration for financing is an existing business. However, for practical purposes, there is an implied restriction, since bond attorneys most likely would not approve an issue for a company without some financial resources and past business experience. A second point of difference between New Mexico and Utah statutes is in the area of taxation. Both states specify that property acquired under this act is public property and therefore exempt from taxation by state, county, and municipality; however, in Utah the practice is for firms to pay the local government unit a sum in lieu of local taxes not paid. The Utah statute requires that the project financed by the bond issue must be located within the boundaries of the issuing local government. There are no provisions which permit the expenditure of state funds for the purchase of revenue bonds in Utah.

Industrial Revenue Bonds in Colorado[14]

The constitutionality of the Colorado statute was resolved in 1970 by a test case involving the Ralston Purina Company. At present, this is the only experience with industrial revenue bond issues in that state.

The Colorado statute permits and excludes many of the same practices as do the New Mexico and Utah laws.

The issuing local government unit (municipality or county) is required to issue revenue bonds instead of general obligation bonds to finance a project. Consequently, the taxing power of the local government unit is not obligated to secure the issue. The bond may be secured by a lease hold agreement or a first mortgage on the project properties. In contrast, New Mexico and Utah permit only first mortgages as security.

The Colorado statute provides that bond proceeds may be used to purchase land, construct buildings, and furnish the project with equipment. In this respect, the statute is similar to both the Utah and New Mexico laws; in contrast to the New Mexico law, however, the governing statute does not permit the use of bond proceeds for operating capital. The Colorado law does not prohibit bond issuance for new firms; however, without substantial firm resources, it would be difficult to get bond attorneys' approval for such an issuance. New Mexico is the only Four Corners state which explicitly prohibits issuances for new firms. With respect to taxation, the Colorado statute is quite similar to the Utah law in that it requires the lessee to make a payment in lieu of taxes. The Colorado statute requires that a municipality's bond-financed project be located within an eight-mile radius of the city. If the county is the local governmental unit financing the project, it must be located within the boundaries of the county. Present Colorado statutes prohibit the use of state funds for the purchase of industrial revenue bonds.

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[14]Telephone interview with Dwight Neil, Denver, Colo.

Industrial Development Bonds in Arizona[15]

The most recent Arizona statute (1968) governing the use of industrial development bonds is in significant contrast with the statutes in other Four Corners states.

Under the Arizona statute, a municipality or county must establish a nonprofit public corporation by which bonds may be issued. This is in contrast to the other state's statutes, which permit a local governmental unit (city or county) to issue the bonds directly. The corporation must be nonprofit, and can in no way operate any manufacturing, industrial, or commercial enterprise. To establish a corporation, at least three persons, who are qualified electors and taxpayers in the municipality or county, file with any governing body a written application seeking permission to apply for the incorporation of an industrial development board. If the governing body approves, then the persons making such application shall proceed to incorporate as prescribed by the states' statute. No corporation may be formed unless such application has been filed with the governing body. The articles of incorporation must set forth the following:

1. The names and residences of the applicants, together with a recital that each of them is an elector of and taxpayer in the municipality or the county.

2. The name of corporation, which shall be "The Industrial Development Authority of the ..... of ....., Inc." (the blank spaces to be filled in with the name of the municipality or county, including the proper designation thereof as a city, town or county).

3. A recital that permission to organize the authority has been granted by resolution duly adopted by the governing body of the municipality or county and the date of the adoption of such resolution.

4. The location of the principal office of the authority, which shall be in the municipality or county.

The board of directors, of the corporation, must number greater than three but less than nine. To be a member of the board of directors, the individual must be a qualified elector of and taxpayer in the municipality or county. The directors are elected by the governing body of the county or municipality to hold offices for overlapping years. The statute requires that a director shall serve without compensation, shall not be an officer or employee of the authorizing municipality or county, and shall have no financial interest in any project.

The board of directors has authority to acquire by purchase, construct, maintain, equip, and furnish one or more "projects". A "project" is defined as any building, land, or other improvements and all real and personal properties but not limited to machinery and equipment deemed necessary for the enterprise. The directors are given the power to (1) lease or terminate the lease on any project or (2) issue bonds to finance projects and

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[15]State of Arizona, Senate Bill 190, relating to the use of nonprofit corporations for the purpose of promoting industry. (Courtesy of Bill Nelson, Arizona Department of Economic Planning and Development, Phoenix, Ariz.)

pledge the revenues and receipts from the project as security for the payment of principal and interest on bonds.

The nonprofit corporation in Arizona does not have power to operate any project as a business or permit any funds derived from the sale of its bonds to be used by the lessee of a project as working capital. The principal and interest on bonds issued by the corporation are secured by a pledge of the revenues and receipts out of which principal and interest are made payable and can also be secured by a mortgage covering all or any part of the projects and properties from which the revenues or receipts so pledged may be derived.

In Arizona, the income of the nonprofit corporation is exempt from all taxation. However, the projects and properties owned by the corporation which is leased to others are subject to all applicable taxes. These taxes are charged to lessees and are not to be intended as an obligation of the corporation.

Will the interest on the bonds issued by the nonprofit corporation enjoy the same tax benefits as the interest from a bond issued by a local governmental unit? The intent of the Arizona statute was that the interest income from these bonds would have the same tax privileges as income from municipally-issued bonds. However, since the bonds are issued by a corporation, the Internal Revenue Service may not approve the tax-exempt nature of the income from these bonds. So, if the bonds' interest payment were not tax-exempt income, they would be sold at the same interest rate as a corporate bond. The financed firm is obligated to pay all applicable taxes, i.e., it doesn't enjoy any property tax shelter. If there is no property tax-break and if the bonds' income is taxable, there is no advantage for the firm to be financed in this manner. Until legal action determines the tax-exempt nature of interest income from bonds issued by a public corporation, the provision may never be used.

The Arizona statute requires that the project must be located within the boundaries of the local government unit which has established the public corporation that issued the bonds. The firm financed does not have to have operated previously. For example, in Arizona, a new business venture could be financed by this technique. Unless the firm financed possesses substantial capital resources it would be difficult to get underwriters' approval of a bond issue (table 2). (See table 2 for a comparison of Industrial Development Bond Statute in each of the Four Corners states.)

Implementation Procedure for Industrial Revenue Bonds

There are no obvious barriers to the use of industrial revenue bonds in Colorado, New Mexico, or Utah. Until the tax status of the interest on the bonds issued by the public development corporation is determined, it is doubtful that the provisions of the Arizona statute will be used. If the Internal Revenue Service should rule against the tax exemption on the interest income, the bonds would be sold at the same interest rate as a corporate bond; so there would be no advantage to the firm financed in this manner.

A general outline of procedures to be followed by the local governmental unit when implementing industrial revenue bonds in Colorado, New Mexico, or Utah follows.

Table 2. A comparison of industrial development bond statutes in Four Corners states

Item	Arizona	Colorado	New Mexico	Utah
Can only revenue bonds be issued to finance project?	[1]	Yes	Yes	Yes
Bond secured by first mortgage?	Yes	Yes	Yes	Yes
Bond secured by lease-hold agreement with financed firm?	Yes	Yes	No	No
May state funds be used to purchase bonds?	No	No	Yes	No
Are local taxes waived?	No	No	Yes[2]	No
Must project be located within boundaries of issuing local government?	Yes	No	No	Yes
Can new business ventures be financed by I.R.B.?	Yes	Yes	No[3]	Yes

[1]The Arizona statute is not always comparable with those of other Four Corner states because the Arizona law requires that a public development corporation be established to issue bonds.

[2]Local government unit may or may not require payment in lieu of taxes. Generally, local government unit does not request payment.

[3]New Mexico is the only state that requires the applicant to have operated previously.

The local governmental unit, in most cases, must pass an ordinance authorizing it to issue industrial revenue bonds. A general election is not required for approval of the ordinance, and the approval is issued by the local governing authority. (A sample ordinance relating to the requirements for the issuance of industrial revenue bonds pursuant to the New Mexico Industrial Revenue Bond Act may be found in Appendix A.) Assuming that a firm wishes to be financed by the use of industrial revenue bonds, the next step is that the local governmental unit solicits information from the applicant. In general, the information pertains to the financial condition of the applicant. (A more detailed outline of information required for applicants may be found in Appendix B.) If the local governmental unit desires, it may turn the responsibility of the investigation over to a fiscal agent to determine the salability of the bond issued. The local governmental unit and the interested firm are then informed of the interest rate necessary to sell the bonds. If there is agreement, the bonds are issued and their proceeds are then returned to the local governmental unit for construction of the new project.

Any local governmental unit contemplating action under the law should consult a recognized firm of municipal bond attorneys to be assured that a proper validating opinion can be furnished bond purchasers. A company about to lease assets from a local governmental unit should have eminent tax counsel advice.

Appendix A [19]

A SAMPLE ORDINANCE RELATING TO REQUIREMENTS FOR THE ISSUANCE BY A MUNICIPALITY OF REVENUE BONDS PURSUANT TO THE INDUSTRIAL REVENUE BOND ACT

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF _____,

NEW MEXICO, as follows:

Section 1. Declaration of Policy. It is the policy of the City of _____ to encourage the location, relocation, or expansion of manufacturing, industrial or commercial enterprises in or near the corporate limits thereof, and to that end to issue revenue bonds pursuant to the Commercial and Industrial Project Bond Act, Laws 1955, Chapter 234, and to take all other necessary action with respect to projects approved by the City Council upon application made in accordance with the requirements of this ordinance.

(a) It is the duty of the Mayor to give prompt and energetic attention to applications made pursuant to this statute.

(b) The City Council will itself make all necessary determinations of the desirability of projects and will not delegate this determination to any agent, contractor or employee of the City.

(c) The City will not employ the provisions of the Commercial and Industrial Project Bond Act with regard to industries presently located in other parts of the State of New Mexico if the result of such action is to induce the removal of those industries from their present location.

(d) The City declares its intention to require the payment on any project of ad valorem real estate taxes in the same amount and manner as if the ownership of the real estate remained in private hands rather than in the tax-exempt status of City ownership.

(e) The City will require information and proof of such matters which will establish the bonafide purposes of the applicant, while not unnecessarily divulging information to the competitive disadvantage of the applicant.

(f) The City will, in performing its duties, seek to protect and enlarge the good fiscal reputation of the community.

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[19] New Mexico Revenue Bond Act 1971, Department of Development, Santa Fe.

(g) Material supplied under the following sections of this ordinance shall not be made public unless the City Council at a public meeting agrees to issue the revenue bonds provided hereunder, but this shall not preclude the City Council from giving such public notice of its consideration of the application as necessary to attract the comments and suggestions of the community.

Section 2. Form of Application. An application hereunder shall be filed by the corporation, partnership, proprietorship, or other organization, which shall own, or propose to purchase or lease from the City of _____, the assets of the project as of the date of the application. The application shall be filed in triplicate with the Mayor, shall be typewritten or printed, and shall contain the information and documents specified in Section 3 hereof.

Section 3. The applicant shall furnish such relevant information and documents as may be required by the Mayor in order to evaluate the application.

Section 4. Execution of Application. At least one copy of each application shall be manually signed by the applicant, its principal executive officers, its principal financial officer, its comptroller or principal accounting officer, and the majority of its board of directors. If only one copy of the application shall be manually signed, each other copy thereof shall be confirmed.

Section 5. Review of Material. Upon receipt of the material required to be submitted with application, the Mayor shall review it, availing himself of the assistance of his staff and such other persons in the business, commercial and industrial community who, in his judgment, may have experience and understanding of the matters sufficient properly to evaluate the application. The applicant may be required to furnish additional information or to elaborate or explain matters connected therewith. Upon the completion of this review the Mayor shall recommend to the City Council the action to be taken, and shall submit the application and all supporting material to the City Council with such recommendation.

Section 6. Approval of Application and Issuance of Bonds. If the City Council shall approve the application, it shall fix a date on which it will adopt an ordinance creating an issue of revenue bonds, and on that date shall adopt such ordinance setting forth the terms upon which the City shall acquire such project and issue such bonds.

Section 7. Closing. On such date and at such time and place as the City Commission shall determine, all transactions required in connection with the project and the issuance of the revenue bonds shall be closed.

Section 8. Fees. All costs, expenses and other charges in connection with any action or proceeding under the Commercial and Industrial Project Act shall be paid by the applicant. The City Council may require the payment in advance of an amount estimated to be adequate to cover foreseeable expenses. The minimum fee, which shall be paid to the City at the time of filing the application, shall be Five Hundred ($500.00) Dollars.

Section 9. That this ordinance is necessary for the preservation of the City of _____, _____ County, New Mexico, and that this ordinance is hereby declared to be an

emergency measure on the ground of urgent public need and therefore, immediately upon its final passage, shall be recorded in the book of ordinances of said City kept for that purpose, authenticated by the signatures of the Mayor and City Clerk, and shall be published in the _____, a newspaper published in the City of _____, of general circulation therein, and said ordinance shall be in full force and effect five days after such publication.

PASSED, ADOPTED, SIGNED AND APPROVED THIS _____ day of _____, 19___.

/s/_____
Mayor of the City of _____,
New Mexico

SEAL

ATTEST:

/s/_____
City Clerk

Appendix B[20]

INFORMATION REQUIRED FOR APPLICATIONS FOR ISSUANCE OF MUNICIPAL INDUSTRIAL REVENUE BONDS

The application shall contain the following information and documents, which shall be attached as exhibits thereto.

(a) The name, principal and form of the applicant.

(b) The jurisdiction of its organization.

(c) The names, addresses, and principal occupations of, if the applicant be a corporation, the directors or persons performing similar functions, and chief executive, financial and accounting officers; if a partnership, of all partners, general or limited; if a proprietorship, of the proprietor, and, if the business was formed within two years prior to filing of the application, of the promoters. The names, identities and relationships of any locating agents or other representatives of the company may also be required.

(d) The names, addresses and principal occupations, of all persons, if any, owning of record or beneficially, if known, more than ten (10%) percent of any class of stock of the applicant, or more than ten (10%) percent in the aggregate of the outstanding stock of the applicant, and the amount of securities of the applicant held by any person named in subject application.

(e) The general character of the business actually transacted by the applicant.

(f) A description in detail of the capitalization and long-term debt of the applicant, including a description of each security outstanding.

(g) A description in detail of all options to acquire any security of the applicant, and the amount of any such options held by or to be issued to any person named in sub-paragraphs (c) and (d).

(h) All amounts paid to the persons named in sub-paragraphs (c) and (d) during the past year and to be paid during the ensuing year, other than as dividends in respect of stock of the applicant.

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[20] New Mexico Revenue Bond Act 1971, Department of Development, Santa Fe.

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(i) A statement of the amount and kind of consideration for which the applicant issued any of its securities within the past two years, or is obligated to issue any of its securities.

(j) A description in detail of any material interest in any material transaction with the applicant effected within the past two years of any person named in sub-paragraphs (c) and (d).

(k) A description in detail (or a copy) of every management or other material contract made by the applicant otherwise than in the ordinary course of business, which is to be performed in whole or in part at or after the filing of the application, or was made within two years prior to such filing.

(l) An independently certified balance sheet of the applicant as of the close of the applicant's preceding fiscal year, and a balance sheet, which need not be certified as of a date not more than sixty (60) days prior to the date of filing; and an independently certified profit and loss statement for the three preceding fiscal years (or for the period of the applicant's existence if less than three years) and for the interim between the close of the preceding fiscal year and the most recent balance sheet filed with the application.

(m) A copy of the charter and by-laws or basic agreement under which the applicant is organized.

(n) A copy of the most recent registration statements, prospectus, and any interim reports filed with the Securities Exchange Commission or any state securities department or commission.

(o) A full and complete description of the project proposed pursuant to the Commercial and Industrial Project Bond Act, including the type of business, the location of the proposed plant (or expansion thereof), the physical properties and equipment required in connection therewith, and the number of employees expected to be hired as a result of completion and operation of the project.

(p) Forms of any lease, sales contract, and mortgage proposed to be entered into between the applicant and the City of _____.

(q) A full and complete description of the financial requirements of the applicant in connection with the project, including the principal amount of the issue of revenue bonds to be issued by the City of _____, the disposition to be made of the proceeds of such issue by the City and by the applicant, the estimated cost of the project in detail, the terms and conditions of the proposed revenue bonds, the name of the underwriter, the plan of distribution, and the amount of all commissions, discounts, finder's fees, or other selling expense.

(r) A copy of the proposed form of revenue bond and draft of a Council Ordinance creating the issue.

(s) A copy (inform if unexecuted) of all underwriting or selling group agreements with respect to the offering or sale of the bonds.

(t) A copy of a form of trust indenture between the applicant, the City of _____, and a qualified corporate trustee, which shall provide for a pledge by the City to the trustee of any lease, mortgage, or other security instrument and all revenue to accrue thereunder, in connection with the project, and shall authorize the trustee to apply all revenue to the payment of interest and principal of the bonds according to the terms thereof, and upon the happening of an event of default under such security instrument or the bonds to foreclose such pledge or otherwise perfect its rights to the lien of such security instrument, and to foreclose or otherwise prosecute such lien against the applicant and its properties for the benefit of the bondholders. A trust indenture similar in form to indentures qualifying under the Trust Indenture Act of 1939 will, in general, be satisfactory.

(u) The written statement of the trustee that it will execute the aforesaid trust indenture concurrently with the issuance of the bonds.

(v) The written agreement of the applicant to pay all ad valorem state and local taxes and assessments applicable to its properties, whether or not required by law to pay such taxes and assessments.

(w) The written opinion of counsel to the applicant that the project and all action proposed in connection therewith qualifies under the Commercial and Industrial Project Bond Act, that the actions proposed to the City of _____ would, if taken by it, be authorized by such Act, and that the proposed bonds will, if issued, be valid and enforceable in accordance with the terms thereof.

(x) The written agreement of the applicant to indemnify and hold harmless the City of _____ from any loss, liability, expense, cost, or obligation in connection with the project, the bonds, or any action in connection therewith; and such agreement shall be secured by such bond, security, or personal guaranty as the City Council may require.

(y) Such other information, documents, or assurances as the City Council may require.

(z) A sworn statement that, subject to the penalties for perjury, all statements contained in or submitted as part of the application are true and correct to the knowledge of each person signing the application.